

Natural Gas Pipeline Projects on NJ Preserved Farmland
Frequently Asked Questions
December 2015

- 1. What is the State Agriculture Development Committee's (SADC) role in these pipeline projects? Does the SADC represent me and my farm in the transaction?**

The SADC works with landowners, County Agriculture Development Boards (CADBs), municipalities and pipeline companies to avoid pipeline impacts to preserved farms. Where such impacts are unavoidable, the SADC makes recommendations that seek to minimize those impacts and to ensure that New Jersey's preserved farmland and other agricultural resources are protected to the maximum extent possible. If the SADC provided a cost-share grant toward the preservation of a farm, the agency will review the negotiated value to ensure it adequately reflects the current fair market value of the development potential. The SADC cannot provide legal advice to landowners or represent them in the condemnation process.
- 2. How is it that a pipeline company can cross preserved farmland? I thought that once a farm's preserved, it can't have such nonagricultural development occur on it.**

When a farm is preserved, the County, SADC or a nonprofit purchases an easement that includes the land's nonagricultural development rights. Under the Agriculture Retention and Development Act, which governs New Jersey's Farmland Preservation Program (FPP), those development rights cannot be sold, transferred or conveyed in any way, including to permit nonagricultural development. However, the Federal Natural Gas Act may supersede New Jersey's law in certain instances and allow condemnation of preserved farmland.
- 3. Why must the pipeline company first obtain the right to construct their projects through a court order to condemn farmland preserved property before the SADC can consent to a negotiated value?**

State law prohibits the SADC from voluntarily re-conveying its interest in farmland preserved properties. As a result, the pipeline company is required to condemn. Because pipeline construction constitutes development of the preserved farm for nonagricultural purposes and you do not own the nonagricultural development rights to your farm, you cannot sell the pipeline company an easement or simply allow a pipeline to cross the farm. The only way that a pipeline company can obtain easement rights to your land is through a court-approved condemnation or taking.
- 4. Do I need to notify the SADC when I begin negotiations with the pipeline company?**

You do not need to notify the SADC when you begin negotiations. However, you cannot finalize negotiations without the participation of the SADC (and the FPP easement holder

if other than the SADC) if the SADC provided a cost-share grant toward the preservation of your farm.

5. How can I get detailed information about what the pipeline company proposes to do on my property?

Most pipeline companies have websites with pipeline routing information available. Pipeline companies directly notify owners of properties that will be affected and typically also notify landowners when there is a change in the project (e.g., if the pipeline path is revised such that their properties are no longer affected.) If the pipeline is a Federal Energy Regulatory Commission (FERC) project, a variety of project information is available through the Federal agency's website (www.ferc.gov).

6. I have irrigation and drainage facilities that could be affected by the pipeline project. What can I do about that?

The SADC recommends that a pipeline company adopt an agricultural impact minimization plan, and will work with the company to help develop it. This type of plan details construction standards and measures that will be taken to minimize any pipeline impacts on preserved farmland and agricultural operations. The plan may address issues such as pipeline depth; topsoil removal and protection; prevention of soil erosion; damage to/interference with drainage and irrigation facilities and other agricultural infrastructure; ingress and egress routes; removal of construction debris; and post-construction monitoring and remediation. Typically, details of how the pipeline company will address these and other farm-specific concerns are spelled out in an agreement between the landowner and the pipeline company.

7. Once the area to be condemned is identified, how is compensation calculated?

The pipeline company will conduct appraisals of the areas that will be affected by condemnation. Some of those easements may be temporary (e.g., for temporary work space) and others will be permanent. The property will be appraised as if it were not yet preserved so that the impact to the value of development potential can be assessed. Condemnation proceeds are paid to compensate for impacts to 1) the value of the development potential – payable to the FPP easement holder and its funding partners – and 2) the impact to the underlying farmland and farmland operation – payable to the landowner. The amounts of compensation to the landowner and the FPP easement holder/funding partners are calculated using the fraction that is typically set forth in paragraph 23 of the farmland preservation deed of easement.

8. Why is the Farmland Preservation Program entitled to a portion of the condemnation proceeds?

The deed of easement for your preserved farm provides that any condemnation proceeds or awards are to be divided amongst the FPP easement holder, its funding partners and the landowner. The FPP easement holder purchased the farm's nonagricultural development rights at the time of preservation using public monies. Pipeline construction is considered nonagricultural development. Therefore, the FPP easement holder and the

public must be reimbursed for the taking of a portion of the development rights associated with pipeline development. It is important to note that the FPP easement holder is not entitled to a share of all compensation. Payments for impacts to farmland that was not preserved (e.g., exception areas and road rights-of-way existing at the time of preservation and not subject to the deed of easement), or for crop losses, interference with the planting season or damages to improvements and other farm infrastructure caused by pipeline construction, are payable to the landowner alone. For more detailed information on how compensation is calculated and allocated, please refer to the “Landowner Guide to SADC Procedures for the Condemnation of Preserved Farmland.”

9. What shape will my farm be in after the pipeline project is completed? How can I make sure the property is left in as good a condition as possible after the company leaves my farm?

Landowners should ensure that requirements for construction, cleanup and restoration are set forth in an agreement with the pipeline company. Pipeline companies typically hire a third party to carry out the work. If you believe such activities are deficient, you should contact the pipeline company. If you are still not satisfied, contact your CADB or the SADC.

10. I have a certified organic farm and I don’t want any activity of the pipeline project to ruin that status. How can I make sure that doesn’t happen?

The easement agreement with the pipeline company should spell out any special requirements necessary for your operation to retain organic status. If acceptable terms cannot be negotiated, then you can argue that you are entitled to additional damages for the taking of the easement.

11. I don’t want a pipeline to cross my farm. Is there anything I can do to stop this?

As the SADC understands the process, FERC provides opportunities for public participation and comment before it issues a “certificate of public convenience and necessity” for an interstate pipeline project. Its review procedures are designed to engage affected parties early on in an extensive process to identify and try to resolve issues of concern prior to, and following, the pipeline company filing a formal application for a certificate. During this period, there may be opportunities to influence realignments in the pipeline route and mitigate project impacts in response to landowner and other concerns. The SADC, which is very actively involved in the FERC process, encourages individual landowners to participate as well and make their concerns known. Affected property owners also can seek legal advice on possible grounds to oppose the pipeline’s siting on a particular property.

12. Where can I get more information?

If you have other questions regarding pipeline projects on preserved farmland, please contact Steven Bruder, the SADC’s Supervising Planner. He can be reached at steven.bruder@ag.state.nj.us or (609) 984-2504.

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